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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>1</sup>

USA SECURITIES, LLC,<sup>2</sup>

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO  
PROOFS OF CLAIM BASED UPON  
INVESTMENT IN ELIZABETH  
MAY LOAN; AND CERTIFICATE  
OF SERVICE**

Date of Hearing: February 5, 2010  
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves under § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proof of Claim filed by individual investors ("Direct Lenders") against USA

<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

<sup>2</sup> This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based upon an  
2 investment in the Elizabeth May Loan (the “Elizabeth May Loan”). This Objection is  
3 supported by the Court’s record and the Declaration of Edward M. Burr in Support of  
4 Omnibus Objections to Proofs of Claim Based Upon the Investment in Elizabeth May  
5 Loan filed with the Court on April 2, 2008, [DE 6113] (the “Burr Decl.”).

6 **I. INTRODUCTION**

7 On January 18, 2007, the borrower paid off the Elizabeth May Loan in full. In turn,  
8 USACM distributed the proceeds to the Direct Lenders who were paid in full, subject to  
9 servicing fees and any other charges under their respective Loan Servicing Agreements  
10 and this Court’s orders, including the Confirmation Order. This Objection seeks an order  
11 from the Court disallowing Direct Lender claims to the extent they are based upon an  
12 investment in the Elizabeth May Loan. To the extent a Direct Lender claim is based upon  
13 an investment in a different loan, it will not be impacted by this Objection.

14 **II. JURISDICTION**

15 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
16 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
17 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

18 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
19 Bankruptcy Rule 3007.

20 **III. BACKGROUND**

21 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
22 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
23 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
24 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary  
25 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
26 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of

1 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the  
2 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
3 ("Mesirow"), who served as the Chief Restructuring Officer.

4 USACM was a Nevada corporation that, prior to the Petition Date, was in the  
5 business of underwriting, originating, brokering, funding and servicing commercial loans  
6 primarily secured by real estate, both on behalf of investors and for its own account. That  
7 business included the solicitation of individual investors to purchase fractional interest in  
8 loans that USACM originated and then serviced. These investors, totaling approximately  
9 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy  
10 case and in this Objection. Although USACM serviced and sometimes originated the  
11 loans in which the Direct Lenders invested, generally USACM was not a borrower on  
12 these loans.

13 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
14 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
15 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to  
16 USACM with respect to standing to seek allowance and disallowance of Claims. The  
17 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.  
18 Geoffrey L. Berman is the Trustee.

19 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders  
20 that appear to be based, upon an investment in the Elizabeth May Loan. **Exhibit A** shows  
21 the Proof of Claim number, the claimant, the claimant's address, the total amount of the  
22 claim and the total amount of the claim that appears to be related to an investment in the  
23 Elizabeth May Loan based upon the information provided by the claimant. The claims  
24 listed in **Exhibit A** are referred to hereafter as the Elizabeth May Claims. A copy of the  
25 first page of the proof(s) of claim listed on **Exhibit A** is attached as **Exhibit B**.  
26

1 On or about January 18, 2007, the Elizabeth May Loan was paid off in full, as  
2 reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM  
3 processed the payoff and distributed the proceeds to the Direct Lenders on the Elizabeth  
4 May Loan. *Id.* The Direct Lenders were in turn paid in full for their investment in the  
5 Elizabeth May Loan, subject to servicing fees and any other charges under their respective  
6 Loan Servicing Agreements and this Court's orders, including the Confirmation Order.  
7 (Burr Decl. ¶ 9.) In general, the Direct Lenders received their principal and interest on the  
8 Elizabeth May Loan, less sums withheld for servicing fees, servicer advances, Prepaid  
9 Interest and sums known as the 2% Holdback pursuant to the confirmed Plan. *Id.* On the  
10 Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback  
11 was applied to the allowed claims of the Direct Lender Committee, and the balance paid to  
12 the Direct Lenders. *Id.* Accordingly, the USACM Trust no longer has further obligations  
13 to the Direct Lenders arising out of the Elizabeth May Loan. (Burr Decl. ¶ 10.)

#### 14 **IV. OBJECTION**

15 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
16 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
17 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
18 shall allow the Claim except to the extent that the Claim is "unenforceable against the  
19 debtor . . . under any . . . applicable law for a reason other than because such claim is  
20 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to  
21 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed  
22 Plan, as the deadline for such objections has been extended to February 5, 2010, by this  
23 Court's orders.

1 The USACM Trust objects to the Elizabeth May Claim and requests that the Court  
2 disallow the claims listed in **Exhibit A** to the extent those claims are based upon a Direct  
3 Lender investment in the Elizabeth May Loan because the Direct Lenders were paid in full  
4 on their investments in Elizabeth May Loan. The USACM Trust asks that the Court  
5 sustain this objection and grant such other and further relief as is just and proper.

6 Dated: January 7, 2010.

7 LEWIS AND ROCA LLP

8  
9 By /s/ John Hinderaker  
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11 John C. Hinderaker, AZ 18024 (*pro hac vice*)  
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*Attorneys for the USACM Liquidating Trust*

14 Copy of the foregoing and pertinent  
15 Portions of Exhibit A and Exhibit B  
16 mailed by first class  
Postage prepaid U.S. mail  
On January 7, 2010 to:

17 All parties in interest listed on  
18 Exhibit A attached

19 /s/ Leilani Lista  
20 Leilani Lista  
21 Lewis and Roca LLP  
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